

# Courtroom Minute Entry

Room: WVSCHADCR03711  
 Caption: John Baxley, Jr., et al. v. Betsy Jividen

Case No.: 3:18-cv-01526

Type: Motion Hearing  
 Judge: Omar Aboulhosn

Started: 4/13/2022 2:27:48 PM  
 Ends: 4/13/2022 3:47:05 PM Length: 01:19:18

2:28:02 PM Judge Omar Aboulhosn  
 2:28:03 PM Courtroom Deputy Tammy Davis  
 2:28:03 PM Attorney Lydia Milnes  
 2:28:04 PM Attorney Lesley Nash  
 2:28:05 PM Attorney William Murray  
 2:28:06 PM Attorney Jaden Rhea  
 2:28:07 PM Attorney Anne O'Hare  
 2:28:08 PM Plaintiff Betsy Jividen  
 2:28:10 PM Brandolya Felton-Ernest  
**MOTIONS HEARING**  
 2:32:17 PM Judge Omar Aboulhosn  
 2:32:18 PM Calls case  
 2:32:23 PM Attorney Lydia Miles  
 2:32:24 PM Attorney Lesley Nash  
 2:32:28 PM Attorney William Murray  
 2:32:49 PM Attorney Jaden Rhea  
 2:32:52 PM Plaintiff Betsy Jividen  
 2:33:17 PM Attorney Ann O'Hare  
 2:33:24 PM Judge Omar Aboulhosn  
 2:33:27 PM Discusses the various pleadings filed since last hearing.  
 2:33:52 PM Attorney Lesley Nash  
 2:34:01 PM Proffers to the Court  
 2:34:04 PM Judge Omar Aboulhosn  
 2:34:09 PM I will use the defendant's reply.  
 2:35:06 PM Attorney Lesley Nash  
 2:35:08 PM Proffers to the Court  
 2:35:36 PM Judge Omar Aboulhosn  
 2:35:37 PM Discusses the third request.  
 2:35:51 PM Attorney William Murray  
 2:36:15 PM Proffers to the Court  
 2:36:29 PM Judge Omar Aboulhosn  
 2:36:32 PM I ordered this is a Motion to Compel two years ago.  
 2:36:59 PM Attorney William Murray  
 2:37:02 PM Proffers to the Court  
 2:39:09 PM Judge Omar Aboulhosn  
 2:39:11 PM Two federal judges ordered you to produce that two years ago.  
 2:39:46 PM Attorney Lesley Nash  
 2:39:49 PM Discusses specific requests.  
 2:40:08 PM Attorney William Murray  
 2:40:11 PM We have produced everything except for what was received today.  
 2:40:23 PM Attorney Lesley Nash  
 2:40:27 PM Discusses Betsy Jividen's deposition.  
 2:41:22 PM Attorney William Murray  
 2:41:24 PM Addresses the Court.  
 2:42:59 PM Judge Omar Aboulhosn  
 2:43:01 PM Who is in charge here?  
 2:43:20 PM Attorney William Murray  
 2:43:21 PM It depends on what is being requested, your honor.  
 2:45:34 PM Judge Omar Aboulhosn  
 2:45:36 PM Discusses the Court's Orders not being complied with.  
 2:46:03 PM We have more things to discuss.  
 2:46:13 PM Attorney William Murray

2:46:15 PM Discusses when the COVID audits will be completed.  
2:46:47 PM Judge Omar Aboulhosn  
2:46:50 PM Those are two years late.  
2:47:08 PM Asks plaintiff to finish that up.  
2:47:14 PM Attorney Lesley Nash  
2:47:18 PM Proffers to the Court  
2:48:06 PM Judge Omar Aboulhosn  
2:48:08 PM Give them specific dates and I want that produced tomorrow.  
2:48:40 PM Discusses third request for production of documents as to Prime Care facilities.  
2:49:24 PM Attorney Lesley Nash  
2:49:26 PM We agree that request is resolved.  
2:49:37 PM Judge Omar Aboulhosn  
2:49:38 PM What took so long?  
2:49:45 PM Prime Care documents are your documents.  
2:49:52 PM Attorney William Murray  
2:49:54 PM That is true but I do not have them in my position.  
2:50:02 PM Attorney Ann O'Hare  
2:50:05 PM Addresses the Court  
2:51:02 PM Judge Omar Aboulhosn  
2:51:03 PM Why wait until then to get them to the defendant.  
2:51:15 PM Attorney Ann O'Hare  
2:51:17 PM Addresses the Court's questions.  
2:51:23 PM Judge Omar Aboulhosn  
2:51:29 PM Next thing, fourth request for production of documents.  
2:52:42 PM Attorney Lesley Nash  
2:52:44 PM Discusses what is outstanding.  
2:53:28 PM Judge Omar Aboulhosn  
2:53:29 PM Once again, it is fallen on you.  
2:53:35 PM Attorney Ann O'Hare  
2:53:37 PM Addresses the Court  
2:54:43 PM Attorney Lesley Nash  
2:54:50 PM Discusses their request from nine facilities.  
2:55:14 PM Attorney Ann O'Hare  
2:55:15 PM Addresses the Court  
2:56:48 PM Judge Omar Aboulhosn  
2:56:51 PM Discusses the request being in 2020.  
2:57:26 PM Why haven't you produced it?  
2:57:34 PM Attorney William Murray  
2:57:37 PM Proffers to the Court  
2:57:43 PM Attorney Lesley Nash  
2:58:37 PM Addresses the Court  
2:58:55 PM Judge Omar Aboulhosn  
2:58:57 PM Discusses employee records and their payroll records.  
2:59:18 PM Attorney Ann O'Hare  
2:59:22 PM Addresses the Court  
2:59:26 PM Judge Omar Aboulhosn  
2:59:28 PM Someone has to be responsible - that request was 2020.  
2:59:51 PM Produce it promptly.  
3:00:01 PM Attorney Ann O'Hare  
3:00:03 PM Yes, your honor.  
3:00:05 PM Attorney William Murray  
3:00:07 PM What time period are we looking at?  
3:00:18 PM Judge Omar Aboulhosn  
3:00:20 PM You need to be very careful in your response on when you are producing it and what.  
3:01:22 PM Attorney Lesley Nash  
3:01:24 PM Discusses the plaintiff's position.  
3:02:03 PM Attorney William Murray  
3:02:05 PM That is helpful.  
3:02:09 PM Judge Omar Aboulhosn  
3:02:10 PM When can we get that produced?  
3:02:14 PM Attorney Ann O'Hare  
3:02:36 PM I will inform corporate counsel it needs to be in two weeks.

3:02:47 PM Judge Omar Aboulhosn  
3:02:55 PM You do payroll on the computer. That should be easily produced.  
3:03:20 PM Attorney Ann O'Hare  
3:03:22 PM Yes, your honor.  
3:04:44 PM Attorney William Murray  
3:04:46 PM Addresses the Court  
3:05:42 PM Attorney Lesley Nash  
3:05:52 PM Proffers to the Court.  
3:06:34 PM Attorney William Murray  
3:06:36 PM We will do so.  
3:07:14 PM Judge Omar Aboulhosn  
3:07:16 PM Discusses the Scheduling Order and deadlines.  
3:07:26 PM The next matter is request number 5  
3:08:18 PM Is that resolved?  
3:08:23 PM Attorney Lesley Nash  
3:08:26 PM Yes, your honor.  
3:08:29 PM Attorney William Murray  
3:09:19 PM Addresses the Court  
3:10:16 PM Attorney Jaden Rhea  
3:10:19 PM Addresses the Court  
3:10:33 PM Attorney Lesley Nash  
3:10:42 PM Discusses an email sent to Central Regional Jail.  
3:11:43 PM Judge Omar Aboulhosn  
3:11:45 PM I am not sure I can make them produce something they do not have.  
3:12:02 PM We will deal with that in due time.  
3:12:07 PM Discusses request number 8.  
3:13:08 PM Attorney Lesley Nash  
3:13:10 PM Discusses variety of information received.  
3:14:30 PM Attorney William Murray  
3:14:32 PM Addresses the Court  
3:16:54 PM Judge Omar Aboulhosn  
3:16:56 PM Who is asking to be tested?  
3:17:18 PM Attorney William Murray  
3:17:20 PM Addresses the Court  
3:18:14 PM Attorney Lesley Nash  
3:18:23 PM Discusses refusal forms they have received.  
3:18:45 PM Exposure testing  
3:18:53 PM Attorney William Murray  
3:18:56 PM That will be in their individual records.  
3:19:24 PM Attorney Lesley Nash  
3:19:26 PM We believe there is something else.  
3:19:36 PM Situation reports I believe.  
3:20:01 PM Attorney William Murray  
3:20:03 PM If I may, Mr. Plumley here today can explain that better than me.  
3:20:14 PM He is not counsel but a designated witness.  
3:20:29 PM Mark Plumley placed under oath.  
3:20:50 PM Mr. Plumley addresses the Court.  
3:22:18 PM Judge Omar Aboulhosn  
3:22:20 PM Let me see what you are talking about.  
3:22:28 PM How do you get this information if he is saying it is impossible to pull together?  
3:22:53 PM Mark Plumley  
3:22:57 PM Addresses the Court's questions.  
3:23:20 PM Attorney Ann O'Hare  
3:23:22 PM Addresses the Court  
3:24:21 PM Judge Omar Aboulhosn  
3:24:23 PM Every day you were pulling it together.  
3:24:44 PM Where did this report come from?  
3:24:51 PM Attorney William Murray  
3:25:22 PM Addresses the Court.  
3:25:41 PM Judge Omar Aboulhosn  
3:25:43 PM Where is the underlying information associated with the reports?  
3:25:53 PM Mark Plumley addresses the Court

3:26:39 PM Attorney William Murray  
3:26:42 PM Addresses the Court  
3:27:53 PM Attorney Lesley Nash  
3:27:56 PM What we are interested in is the type of testing.  
3:28:46 PM Attorney William Murray  
3:28:52 PM We don't have that information in that form.  
3:29:01 PM Attorney Lesley Nash  
3:29:33 PM Proffers to the Court.  
3:29:37 PM Judge Omar Aboulhosn  
3:29:38 PM If they don't have it, they don't have it.  
3:29:48 PM It makes a good argument on how are they complying with their own rules?  
3:30:04 PM Attorney Lydia Miles  
3:30:07 PM Addresses the Court as to their frustration in how and what is produced.  
3:30:35 PM Judge Omar Aboulhosn  
3:30:36 PM I don't have the ability to exclude evidence.  
3:31:53 PM The next part of that is at South Central Regional Jail.  
3:32:13 PM Attorney Lesley Nash  
3:32:19 PM Proffers to the Court  
3:32:41 PM Defendant responded in a manner that confused me to be honest.  
3:33:01 PM Judge Omar Aboulhosn  
3:33:05 PM Discusses document requested.  
3:33:24 PM What is the document?  
3:33:28 PM Attorney Lesley Nash  
3:33:30 PM Inmate names, intake date, covid testing  
3:34:01 PM Attorney Jaden Rhea  
3:34:04 PM Addresses the Court  
3:37:17 PM Judge Omar Aboulhosn  
3:37:20 PM Discusses next request  
3:38:40 PM Discusses requests 9, 10 and 11  
3:39:56 PM Attorney Lesley Nash  
3:39:58 PM Answers the Court.  
3:40:09 PM Judge Omar Aboulhosn  
3:40:15 PM There are docs to be produced tomorrow, correct?  
3:40:33 PM Discusses the Court's previous fine ordered of \$1,000 a day.  
3:40:48 PM Attorney Lesley Nash  
3:40:55 PM Addresses their position  
3:41:13 PM There is no justification to lift the sanctions.  
3:41:31 PM Judge Omar Aboulhosn  
3:41:34 PM Discusses the daily fine on extreme delays in producing from 2020 until now.  
3:42:05 PM File a brief as to what you feel is the appropriate sanctions and I will give the defendant an opportunity to reply. You get 14 days to brief it from Friday, April 29th.  
3:42:51 PM Then defendant will have 7 days to respond  
3:43:14 PM And then 3 days to reply  
3:43:19 PM Then I'll issue an order.  
3:43:39 PM I am frustrated. I hope this is the end of discovery disputes.  
3:43:51 PM Is there anything outstanding I need to know?  
3:44:01 PM Attorney Lesley Nash  
3:44:03 PM The sixth production is still due.  
3:44:57 PM Judge Omar Aboulhosn  
3:44:59 PM If it is remotely related, then disclose it.  
3:45:38 PM Heads are going to roll if the requested info. is not disclosed.  
3:46:24 PM Attorney Ann O'Hare  
3:46:28 PM Proffers to the Court.  
3:46:31 PM Judge Omar Aboulhosn  
3:46:33 PM Easily done.  
3:46:35 PM Is there anything else to take care of today?  
3:46:48 PM Hearing adjourned.